



Federal Communications Commission
Washington, D.C. 20554

DA 04-4006

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Nexstar Broadcasting, Inc.
c/o Elizabeth Hammond, Esq.
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1500 K Street, N.W.
Suite 1100
Washington, DC 20005-1209

Re: Assignment of Licenses for
KFTA-TV, Fort Smith, AR
KNWA-TV, Rogers, AR
Facility ID Nos. 29560 & 29557
File Nos. BALCT-20031029ADF,
BALCT-20031029ADG

Dear Ms. Hammond:

This is in reference to the applications to assign the licenses for KFTA-TV, Fort Smith Arkansas, and KNWA-TV, Rogers, Arkansas, from J.D.G. Television Inc. ("J.D.G.") to Nexstar Broadcasting, Inc. ("Nexstar").¹ As part of the assignment applications, Nexstar requests authorization to continue operating KNWA-TV as a satellite of KFTA-TV pursuant to Note 5 of Section 73.3555 of the Commission's Rules.² On December 3, 2003, Ft. Smith 46, Inc. ("Ft. Smith 46"), licensee of Fort Smith area low power and Class A television stations, filed a petition to dismiss or deny contending that the assignee fails to meet the requirements of the Commission's three-pronged showing to allow it to operate KNWA-TV as a satellite of KFTA-TV. Consequently, the petitioner contends that the application must be dismissed or denied since the assignee's ownership of two full power stations will not comply with the Commission's local television duopoly rule.

Pursuant to the Commission's television satellite policy, as set forth in *Television Satellite Stations*, an applicant for satellite status is entitled to a presumption that the proposed satellite operation is in the public interest if it meets three criteria: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase

¹ The original assignee was Nexstar Finance, L.L.C. It subsequently amended the application to substitute its affiliate, Nexstar Broadcasting, Inc., as the proposed assignee.

On August 13, 2004, KPOM-TV changed its call sign to KFTA-TV and KFAA changed its call sign to KNWA-TV.

² 47 C.F.R. § 73.3555, Note 5.

and operate the satellite as a full-service station.³ Applications meeting these criteria, when unrebutted, will be viewed favorably by the Commission. If an applicant cannot qualify for the presumption, the Commission will evaluate the proposal on an *ad hoc* basis, and grant the application if there are compelling circumstances that warrant approval.⁴

With respect to the first criterion, Nexstar originally reported the existence of slight City Grade overlap between KFTA-TV and KNWA-TV. Subsequently, however, Nexstar filed a minor change application to relocate KNWA-TV's NTSC transmitter site to its DTV transmitter site. The application was granted to the current licensee, J.D.G., on October 19, 2004.⁵ Because this modification eliminated the City Grade overlap between the two stations, Nexstar's continuing satellite request now meets the first criterion. Regarding the second criterion, Nexstar shows that its request meets the "transmission test", as it is the only full-service television station licensed to Rogers, Arkansas.

With respect to the third criterion, an applicant must show that no alternative operator is ready and able to construct, or to purchase and operate, the proposed satellite as a full-service station.⁶ Nexstar includes a letter from Brian E. Cobb ("Cobb"), Founder and President of CobbCorp, LLC and a founder and former managing director of Media Venture Partners, both media brokerage and appraisal firms. Cobb states that if KNWA-TV were converted to a full service station, "it is highly probable that it would be financially unsuccessful and at a significant competitive disadvantage." According to Cobb, coverage maps of the stations demonstrate that KNWA-TV's Grade B signal does not reach Fort Smith, the key city in the Fort Smith DMA. Cobb opines that as a result of an insufficient signal in the Fort Smith DMA, KNWA-TV could not operate successfully as a stand-alone station. Cobb concludes that KNWA-TV should continue to operate as a satellite of a viable sister facility in order to survive and provide service to its communities.

Nexstar contends that although its request does not meet all three criteria for a presumptive continued satellite exception, many of the factors relevant to the Commission's original grant of a satellite exception for KNWA-TV are applicable today.⁷ Nexstar argues that continued satellite operations are necessary to allow Nexstar to compete effectively with the other licensees in the Fort Smith DMA. Nexstar maintains that because of mountainous terrain KFTA-TV's signal does not reach the Fayetteville, Rogers and Springdale areas of the DMA, and that KNWA-TV's satellite operations allow for the placement of a strong signal over these

³ *Television Satellite Stations*, 6 FCC Rcd 4212, 4213-4214 (1991) (subsequent citations omitted).

⁴ *Id.* at 4214.

⁵ File No. BPCT-20040121ADD. Although J.D.G. granted Nexstar permission to file the application, on October 7, 2004, J.D.G. amended the application to substitute itself as the applicant.

⁶ *Television Satellite Stations*, 6 FCC Rcd at 4215.

⁷ The original satellite exemption was granted in 1988 prior to adoption of the Commission's current three part test. *John McCutcheon d/b/a MCC Communications*, 4 FCC Rcd 2079 (1989).

portions of the market. Nexstar also asserts that it is doubtful that the small population of Rogers would have an advertising revenue sufficient to support a stand-alone station. Nexstar adds that as a stand-alone station, KNWA-TV would experience substantial programming costs and that without a satellite waiver, KNWA-TV would be unable to compete effectively with other stations. Nexstar also argues that a grant of a continued satellite waiver for KNWA-TV would serve the public interest by facilitating each station's conversion to full-power digital operations.

Petition. Ft. Smith 46 argues that, in light of the number of low power and television translator stations that provide service to Rogers, it cannot be considered an "underserved" area. Further, despite Cobb's statement regarding the lack of an alternate operator, Ft. Smith 46 states that it is interested in purchasing KNWA-TV as a stand-alone station, if the price is reasonable. Adding that it has experience in the Rogers market as a consequence of its low power operations, Ft. Smith 46 disputes Cobb's assertion that a full power station cannot operate effectively in the area.

In its opposition, responding to Ft. Smith 46's statement that it would purchase KNWA-TV as a stand alone station, Nexstar argues that Ft. Smith 46 clearly would be acquiring the station as part of its already existing network of LPTV, TV translator and Class A stations in the market, not on a stand-alone basis. Moreover, Nexstar points out that Ft. Smith 46 provided no analysis as to how KFTA-TV can be operated as a stand-alone station. Nexstar also maintains that grant of the continuing satellite exception will have no effect on the market, but will preserve the status quo.

In reply, Ft. Smith 46 disagrees that granting the satellite exception will preserve the status quo, and argues that several changes have occurred in the Fort Smith DMA since the prior approval of satellite status for KNWA-TV. Specifically, it points out that new networks have been formed. Moreover, according to Ft. Smith 46, the population within KFTA-TV's Grade B contour has increased to 508,129 persons, nearly 75% since 1988. Further, Ft. Smith 46 maintains that the Grade B overlap population between KFTA-TV and KNWA-TV has increased from 11,578 persons in 1989 to 232,989 persons. Ft Smith 46 also points out that the population of Rogers has increased from 17,429 in 1988 to 38,829. It contends that when the satellite waiver was initially requested, there was no independent full power television station licensed to a community within the Fort Smith DMA. Ft. Smith 46 points to station KSBN-TV, Springdale, Arkansas, which serves a smaller area than KNWA-TV, proving that stand alone operation is possible in the Fort Smith DMA.

With respect to KNWA-TV's modification application, Ft. Smith 46 argues that the Commission has previously held that it will not consider applications to modify facilities for the purpose of avoiding overlap problems under the Commission's multiple ownership rules.⁸ Ft. Smith 46 also maintains that its low power operations prove it has the track record and ability to operate KNWA-TV as a stand alone full power station.

⁸ *Stockholders of Renaissance Communications Corp.*, 12 FCC Rcd 11,866 (1997) ("*Renaissance*"); *James T. Sudbury*, 4 RR 2d 679 (1965).

On February 13, 2004, Nexstar filed a motion for leave to file and a supplement to its opposition, notifying the Commission of additional information related to its waiver request. Specifically, Nexstar maintains that the modification application was not filed in order to avoid overlap problems but rather to move KNWA-TV's analog facilities to the tower from which KNWA-DT will operate. According to Nexstar, moving KNWA-TV's analog facilities would reduce expenses through co-located operations of KNWA-TV and KNWA-DT. In response to Ft. Smith 46's assertion that KSBN-TV operates as a stand alone station in the Fort Smith DMA, Nexstar argues that, as a religious broadcaster, KSBN-TV's goals are not the same as other commercial broadcasters in the market. Specifically, Nexstar contends that KSBN-TV does not provide local news or other programming material specific to the Fort Smith DMA, and does not depend solely on commercial revenues to support its operation. Finally, Nexstar submits a further statement from Brian Cobb, who indicates that KFTA-TV would be "materially handicapped" in the absence of KNWA-TV supplementing coverage. Cobb also expresses doubt that KNWA-TV "could be profitable or provide news or other meaningful service to the community" if separated from KFTA-TV.

On February 27, 2004, Ft. Smith 46 opposed Nexstar's supplement claiming that it should not be considered. Ft. Smith 46 argues that Cobb's additional letter and the information concerning the operation of KSBN-TV were available to Nexstar when it filed its opposition. Further, Ft. Smith 46 avers that Cobb's attempts to provide an assessment on the viability of KNWA-TV as a stand-alone station remain refuted by Ft. Smith 46's willingness to buy KNWA-TV. Ft. Smith 46 includes a declaration stating that it is willing to buy and operate KNWA-TV as a stand-alone station for \$2 million, or \$8 million with the NBC affiliation. With respect to Nexstar's argument that KSBN-TV does not depend solely on commercial revenues, Ft. Smith 46 responds that KSBN-TV is a commercial station that competes with other stations in the market. Finally, with respect to KNWA-TV's modification application, Ft. Smith 46 asserts that any benefits of collocation do not justify abandonment of the Commission's principle of not granting a facilities modification for the purpose of compliance with the multiple ownership rules.

On July 8, 2004, the Video Division sent a letter of inquiry to Nexstar, requesting additional information to aid in determining whether grant of a continued satellite exemption would be in the public interest. In its July 28, 2004 response, Nexstar argues that the continued satellite exemption is justified because the Fort Smith DMA is a large geographic area and Fort Smith and Rogers are more than 65 miles apart. Nexstar repeats its claim that there are no network affiliations available in the DMA for KNWA-TV as a stand-alone station. While Nexstar concedes that the population of Rogers has grown, it maintains that the population remains insufficient to support a stand-alone TV station. With respect to whether the Rogers area is likely to have a sufficient advertising base to support KNWA-TV as a stand-alone station, Nexstar indicates that since October 2003 when it began programming KFTA-TV/KNWA-TV under a time brokerage agreement ("TBA"), it has received very few inquiries from northwest Arkansas area businesses seeking to advertise on KNWA-TV only. Nexstar states that, based on the revenues generated from Rogers area businesses, it estimates that such revenues will amount to \$147,000 during the 2004 calendar year. Regarding separate statements of cash flow for

KNWA-TV, Nexstar states that such statements are not available because J.D.G. did not keep separate records for the stations, nor does Nexstar under the TBA.

On August 11, 2004, Ft. Smith 46 filed comments. Ft. Smith 46 avers that Nexstar's characterization of the Fort Smith DMA as a large geographic area is inconsistent with the approach it took in its initial filings. Moreover, Ft. Smith 46 contends that it is "disingenuous" for Nexstar to claim that its advertising revenue base would be limited to businesses in Rogers; it argues that the station serves other cities in the DMA with larger populations and businesses, including the corporate headquarters of Wal-Mart.

Discussion. Having failed to raise a substantial and material question of fact that grant of the subject applications would be inconsistent with the public interest, Ft. Smith 46's petition will be denied.⁹ Regarding the first criterion, Nexstar has supplied an engineering exhibit demonstrating that, with KNWA-TV's modified facilities, no City Grade overlap exists between KFTA-TV and KNWA-TV. Our engineering review confirms that no predicted overlap remains between the two stations. While Ft. Smith disputes Nexstar's characterization of the extent of the overlap existing prior to the facilities modification, it fails to show any specific intent by Nexstar to misrepresent facts. Ft. Smith 46 additionally argues that the Commission has held that it will not entertain applications for modification of facilities that resolve multiple ownership situations. However, the Commission has held that grant of an application for modification of facilities is appropriate where grant of the application would not result in the loss of service to existing viewers.¹⁰ Although the engineering exhibit shows a loss of service resulting from the KNWA-TV modification, we note that all persons losing service from KNWA-TV will continue to receive NBC service from one other NBC affiliate, the parent, KFTA-TV. Moreover, we note that the modification application was filed to move KNWA-TV's analog facilities to the tower from which KNWA-DT's digital facility will operate, for the purpose of reducing expenses through co-located operations. The Commission has specifically encouraged the co-location of analog and digital facilities in order to enhance and accelerate the transition to digital television. Therefore, we reject Ft. Smith 46's argument regarding the first criterion.

For the purposes of the second criterion, an area is deemed underserved if, under the "transmission test," there are two or fewer full-service television stations already licensed to the proposed satellite community of license, or, under the "reception test," 25 percent or more of the area within the proposed satellite's Grade B contour, but outside the parent's Grade B contour, receives four or fewer television services, not including the proposed satellite service.¹¹ Here, we agree with Nexstar that KNWA-TV meets the second presumptive criterion, as it is the only station licensed to Rogers. We are not persuaded by Ft. Smith 46's arguments that because a number of low power stations provide service, Rogers is not an underserved area. As stated

⁹ In order to provide a full record, we will exercise our discretion and consider the substantive matters raised by Nexstar in its supplements.

¹⁰ *Renaissance*, 12 FCC Rcd 11866 at 11876.

¹¹ *Television Satellite Stations*, 6 FCC Rcd at 4215.

above, the Commission considers an area underserved if an applicant demonstrates that it meets the requirements of the “transmission test” or the “reception test”. Nexstar meets the transmission test notwithstanding the fact that low power stations operate in the area. Having adopted the presumptive satellite test in a rulemaking proceeding, the Commission is not required to reexamine and justify its requirements in each case. Petitioner’s arguments, which are more akin to an argument against the test itself, do not persuade us to depart from the Commission’s standard.

With respect to the third criterion, an applicant must show that no alternative operator is ready and able to construct, or to purchase and operate, the proposed satellite as a full-service station.¹² While we do not find that Nexstar’s request meets the third criterion, we believe that its overall showing is sufficient to justify operation under our *ad hoc* analysis.¹³ Specifically, as explained above, Nexstar submits letters from Cobb indicating that if KNWA-TV were converted to a full service station, it would likely be financially unsuccessful. Cobb indicates that due to an insufficient signal in the Fort Smith DMA, KNWA-TV could not operate successfully as a stand-alone station. Moreover, Nexstar contends that Rogers’ small population is unlikely to provide a sufficient advertising revenue base to support a stand-alone station. Nexstar also points out that KNWA-TV would experience substantial programming costs as a stand-alone station.

Finally, although Ft. Smith 46 states that it is ready and able to purchase KNWA-TV as a stand-alone station, it does not provide any persuasive economic data to refute Cobb’s analysis. In any event, we do not consider Ft. Smith 46’s self-serving offer to buy the station, since it is not a qualified buyer itself. On October 15, 2004, its commonly-owned affiliate acquired full service station KWBK (TV), Harrison, Arkansas, located in the Fort Smith DMA.

Ft. Smith 46 argues that the population of Rogers has increased and that in addition to providing service to Rogers, KNWA-TV provides service to Fayetteville, Springdale, and Bentonville. However, we do not believe that these factors alone establish that the Rogers area would be able to support a stand-alone station. Moreover, Ft. Smith 46 does not provide data to support its statement that Rogers and the surrounding area have a sufficient advertising revenue base to support a stand-alone station. Finally, we do not agree that Nexstar’s supplement raises doubts as to the representations it has made in this proceeding. Given the facts presented in this case, including Cobb’s statement that it is unlikely that KNWA-TV would be financially successful and that KNWA-TV would be at a competitive disadvantage as a full service station, we believe that approval of Nexstar’s request for continuing satellite status is warranted and would serve the public interest.¹⁴

¹² *Id.*

¹³ See, e.g., *Red River Broadcast Corp.*, 12 FCC Rcd 2548 (1997); *Plains Television Partnership*, 9 FCC Rcd 4435 (1994).

¹⁴ Ft. Smith 46’s arguments regarding the relationship between Nexstar and Mission lack merit. Specifically, Ft. Smith 46’s reference to a newspaper article cannot provide a basis for denying the satellite waiver request, since the Commission has held that allegations based on newspaper articles are hearsay. *American Mobile Radio*

Having found the applicants fully qualified, we conclude that grant of the subject applications would serve the public interest. Accordingly, the petition to dismiss or deny filed by Ft. Smith 46, Inc. IS DENIED, and Nexstar Finance, L.L.C.'s request for continued authorization to operate KNWA-TV, Rogers, Arkansas as a satellite of KFTA-TV, Fort Smith, Arkansas IS GRANTED.

Further, the applications for consent to assignment of licenses of KFTA-TV, (File No. BALCT-20031029ADF) Fort Smith, Arkansas, and KNWA-TV (File No. BALCT-20031029ADG), Rogers, Arkansas, ARE GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Marvin Rosenberg, Esq. – Counsel for J.D.G. Television, Inc.
Peter Tannenwald, Esq. – Counsel for Ft. Smith 46, Inc.

Corporation, 16 FCC Rcd 21431, 21436 (2001). Moreover, Ft. Smith 46's concerns about the relationship between Nexstar and Mission, and its claims that Nexstar's ownership of KNWA-TV and KFTA-TV will create further media concentration, are speculative.